

Notice of Allowability

Application No.

10/825,823

Applicant(s)

AMERIKS ET AL.

Examiner

Nyeemah Grazier

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 1/30/06.
2. ☒ The allowed claim(s) is/are 1-9,39-43,45,46 and 48.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>3/3/06</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION
NOTICE OF ALLOWANCE

I. ACTION SUMMARY

The Amendments to the Claims and Remarks submitted to the Office on January 30, 2006 have been fully considered and will be the basis of the following Notice of Allowance.

Claims 1-51 are currently pending. Claims 10-38, 44, 47, and 49-51 are cancelled. Claims 1-9, 39-43, 45, 46 and 48 are in condition for allowance.

II. INFORMATION DISCLOSURE STATEMENT

The supplemental information disclosure statement filed on March 3, 2006 has been fully considered by the Examiner.

III. RESPONSE TO AMENDMENTS

Applicant's arguments, *See*, Remarks, filed January 30, 2006, with respect to objection of claims 1-48 have been fully considered and are obviated in light of the Amendments to the Claims.

IV. EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The Specification has been amended as follows:

Insert the following on line 2 after the title and before "Field of the Invention" on page 1,
---This application claims priority to and benefit of US Provisional Application Serial Number
60/463,542, filed on April 17, 2003.---

Authorization for the following examiner's amendment was given in a telephone
interview with John Harbour, Esquire on April 7, 2006.

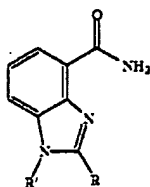
The application has been amended as follows:

1. **Cancel** claims 49, 50, and 51.

V. REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: The instant invention is drawn to 1H-benzimidazole carboxamide and 1H-benzimidazole carboxylic acid compounds and composition. The instant invention appears to be free of the art of record. The closest prior art reference of record is Griffin et al., US 6,310,082 B1.

Griffin et al. patent (the '082 patent) teaches benzimidazole-4-carboxamide compounds of the formula (I) below where R is a benzene ring substituted by R1, R2 and R9. The patent does not disclose or suggest a compound where one of R1, R2, and R9 is -C(O)-Ph. (See, Griffin



et al., cols. 3-4).

The '082 patent does not anticipate nor render obvious the instant invention because the instant invention, although a benzimidazole carboxamide, is drawn specifically to 1H-benzimidazoly-5-carboxamide 2-(4-benzoyl) phenyl derivatives and the '082 patent is not.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

VI. CONCLUSION

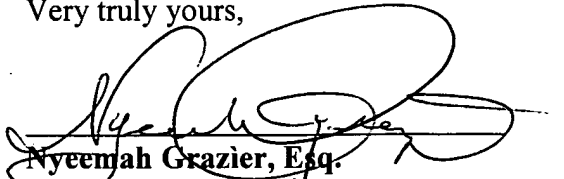
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nyeemah Grazier whose telephone number is (571) 272-8781. The examiner can normally be reached on Monday through Thursday and every other Friday from 8:30 a.m. - 6:00 p.m.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane, can be reached on (571) 272 - 0699. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Very truly yours,


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